



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 1242-99

18 May 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL OF RECORD [REDACTED],
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that the characterization of his discharge be changed.

2. The Board, consisting of Messrs. Milner, Pauling, and Taylor, reviewed Petitioner's allegations of error and injustice on 10 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 23 August 1968 at the age of 17. He was meritoriously advanced to paygrade E-5.

d. During his enlistment, Petitioner received nonjudicial punishment (NJP) on three occasions for a day of unauthorized absence (UA), disobedience, and two incidents of failure to obey a lawful order. Petitioner was also convicted by civil authorities of possession of less than one gram of marijuana and possession of tear gas (a canister of mace).

e. Petitioner demonstrated exemplary service while in Vietnam and was awarded with the Combat Action Ribbon, the Navy Commendation Medal with Combat V, and a letter of commendation.

f. Shortly after Petitioner's civil conviction, he was processed for an administrative separation by reason of misconduct. On 12 May 1971 Petitioner was issued an undesirable discharge.

g. At the time of Petitioner's discharge, his conduct average of 4.2 would have been sufficient for a fully honorable characterization of service. However, since he was discharged by reason of misconduct, characterization of service was not determined by his marks.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board notes Petitioner's misconduct, in both the military and civilian communities, and does not condone his infractions. However, the Board's finding is based, in part, on the relatively minor nature of Petitioner's offenses, specifically, those offenses which occurred in the civil community, and eventually led to his discharge. The Board also notes that Petitioner's conduct average of 4.2 was sufficiently high to warrant a fully honorable characterization of service. In this regard, it appears that the command did not believe his offenses were particularly serious. Finally, the Board notes his outstanding performance during combat in Vietnam.

Based on the foregoing, the Board concludes that no useful purpose is served by continuing to characterize Petitioner's service as having been under other than honorable conditions, and recharacterization is warranted. However, because of Petitioner's record of misconduct, the Board believes that a general discharge is appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge on 12 May 1971 vice the undesirable discharge actually issued on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 23 February 2000.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



For W. DEAN PFEIFFER
Executive Director